

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE	:	
APPLICATION FOR A LICENSE AS A	:	FINAL DECISION
REAL ESTATE SALESPERSON OF	:	AND ORDER
	:	LS9507071REB
STEVEN S. GADE,	:	
APPLICANT.	:	

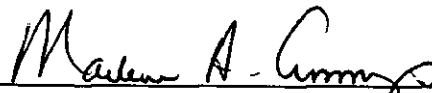
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 13th day of March 1996.


Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE AS A
REAL ESTATE SALESPERSON OF:

STEVEN S. GADE,
APPLICANT.

PROPOSED DECISION
[Case No. LS 9507071 REB]

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Steven S. Gade
1385 Fur Drive Court
Wisconsin Dells, WI 53965

Department of Regulation and Licensing
P.O. Box 8935
Madison, Wisconsin 53708

Division of Enforcement
Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing on July 7, 1995, scheduling a hearing for July 18, 1995 on the decision of the Department of Regulation and Licensing to deny the application of Steven S. Gade for a license to practice as a real estate salesperson. On July 18, 1996, The Department received a telephone call from Beverly Gade, mother of the applicant, advising that Steven Gade would not be able to attend the hearing because he had recently sustained a broken jaw and had difficulty speaking. Attorney Gerald Scanlan, representing the Division of Enforcement, agreed to rescheduling the hearing to accommodate the applicant. At 1:15 p.m. on July 18th, a telephone conference was held with the applicant and attorney Scanlan. The hearing was rescheduled for August 31, 1995. The hearing in the above captioned matter was held as rescheduled on August 31, 1995. Steven Gade appeared in person without counsel and Attorney Gerald Scanlan appeared for the Department. The hearing was tape recorded.

Based upon the entire record in this matter, the administrative law judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Steven S. Gade, date of birth July 22, 1974, of 1385 Fur Drive Court, filed an application dated March 16, 1995 with the Department of Regulation and Licensing for a license to practice as a real estate salesperson in the state of Wisconsin.

2. Applicant Gade provided a copy of Certificate of Completion of Educational Requirements indicating that he successfully completed the 72 classroom hours of educational programs required by sec. 452.09(2), Stats. Gade also passed the real estate salesperson examination on March 19, 1994.

3. On July 14, 1994, In the Circuit Court of the 17th Judicial Circuit of the State of Illinois, Steven Gade entered a plea of guilty to a criminal charge of violation of the Cannabis Control Act of the State of Illinois. In addition to fines and costs assessed, Steven Gade was sentenced to 30 months unsupervised probation. No judgment of conviction was entered pending successful completion of probation. The court record indicates that upon successful completion of probation, no conviction shall enter.

4. On September 30, 1994, while on probation for the Illinois offense described above, Steven Gade was charged in Circuit Court for Columbia County, Wisconsin, with:

a. Felony violation of possession with intent to deliver Tetrahydrocannabinols within 1000 feet of a public school, contrary to secs. 161.14(4)(t), 161.41(1m)(h) and 161.49(1), Stats.

b. Felony violation of delivery of a schedule II controlled substance, opium rock, within 1000 feet of a public school, contrary to secs. 161.16(2)(a)(1), 161.41(1)(a) and 161.49(1), Stats.

5. The felony charges against Steven Gade in Columbia County, as of the time of hearing in this matter, were still pending.

6. On the basis of the record of the plea of guilty to the Illinois charge of violation of the Cannabis Control Act in July 1994, and the pending felony charges dated September 30, 1994 in Columbia County, Wisconsin, of possession with intent to deliver a controlled substance and delivering a controlled substance, both within 1000 feet of a public school, the Department of Regulation and Licensing denied the real estate salesperson license application of Mr. Gade, on the grounds that the circumstances of the offenses represented by the guilty plea in Illinois and the pending charges in Columbia County, Wisconsin are violations the circumstances of which substantially relate to the circumstances of the practice of a real estate sales person. Steven Gade contests that such violations are substantially related to the practice of real estate salesperson.

7. As of the writing of this proposed decision, no further information has been offered by either Steven Gade or the Division of Enforcement, as to whether the Columbia County felony charges have been dismissed or resulted in conviction, or as to the status of Gade's probation in Illinois.

8. The circumstances of the offenses represented by Gade's guilty plea in Illinois to violation of the Cannabis Control Act, of knowingly possessing with intent to deliver between 30 grams and 500 grams of a substance containing cannabis, and the pending felony charges in Columbia County of possession with intent to deliver, and delivery of, controlled substances within 1000 feet of a public school, are substantially related to the circumstances of the practice of a real estate salesperson.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to sec. 452.05, Stats.

2. The circumstances of the applicant's violation of the Illinois Cannabis Control Act, and the pending felony charges of possession with intent to deliver and delivery of controlled substances within 1000 feet of a public school, are substantially related to the circumstances of the practice of a real estate salesperson within the meaning of secs. 111.335(1)(b) and (c)1., Stats.

3. Criminal violation of laws and pending felony charges the circumstances of which substantially relate to the circumstances of the practice of a real estate salesperson constitute a basis for denial of a license under sec. 452.05, Stats.

ORDER

NOW THEREFORE, IT IS ORDERED that the Order of the Department of Regulation and Licensing dated April 11, 1995 denying the application of Steven S. Gade for a license to practice as a real estate salesperson is hereby affirmed, and the license is therefore **DENIED**.

IT IS FURTHER ORDERED that upon a showing satisfactory to the Department that the criminal charges against Steven S. Gade pending in Columbia County, Wisconsin have been dismissed, and further, that no other criminal charges or convictions in any jurisdiction have been filed against Mr. Gade, the Department may consider issuing a limited license to Mr. Gade upon such terms and conditions the Department deems appropriate in order to safeguard the welfare of the public.

OPINION

The central issue raised at hearing is whether the circumstances of Mr. Gade's violation of the Illinois Cannabis Control Act and the felony charges pending in Columbia County substantially relate to the circumstances of the practice of a real estate salesperson. In County of Milwaukee v. LIRC, 139 Wis. 2d 805 (1987), the Wisconsin Supreme Court defined the criteria for establishing substantial relationship of the circumstances of criminal conduct to the circumstances of employment or a licensed occupation or profession. The Court stated:

Assessing whether the tendencies and inclination to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details It is the circumstances which foster criminal activity that are important, e.g. the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. (139 Wis. 2d at 824)

Mr. Cletus Hansen, Director of the Bureau of Direct Licensing and Real Estate, testified on behalf of the Department of Regulation and Licensing, explaining the reasons for denial of Mr. Gade's application for a real estate salesperson's license. Persons engaged in real estate transactions with real estate brokers and salespersons have the right to expect those licensees to deal with them honestly and ethically, and to conduct themselves in a manner so as to elicit the client's trust in and reliance upon the licensee's integrity and reliability. Moreover, the practice of real estate involves the limited practice of law, and one holding a broker or salesperson license must therefore demonstrate a respect for the law.

In this case, Mr. Gade pled guilty to a charge of possession with intent to deliver a controlled substance in the state of Illinois. On July 14, 1994, Mr. Gade was sentenced to 30 months probation. Only two and one half months later, while still on probation, Mr. Gade was arrested and charged again with felony possession with intent to deliver and felony delivery of controlled substances. The latter charges, at least as of the time of hearing in this matter, had not resulted in conviction, nor had they been dismissed. Nevertheless, such charges represent formal allegations of further serious criminal conduct. The fact that Mr. Gade is charged again with serious criminal conduct only two and one half months after being sentenced on the original violation, and while still on probation, draws into serious question whether Mr. Gade possesses the requisite respect for the law, and possesses the ability to conduct himself in a lawful, honest and ethical manner, so as to justify the trust and reliance that potential real estate clients and the public have the right to expect in their dealings with a licensed real estate professional. In his testimony, Mr. Hansen indicated that if Mr. Gade's criminal record had only involved the first offense in Illinois, that the Department probably would not have denied Gade's application, and may have issued at least a limited license with appropriate conditions for safeguarding the public interest. However, Mr. Hansen indicated that the additional felony charges only two and one half months later, while on probation, alleging not only the serious offenses charged, but also alleging admissions by Gade of other extensive and continuous criminal conduct, cast serious doubt on Gade's integrity, honesty and respect for the law, that would be requisite for an individual to

practice as a real estate salesperson.. There is no question but that the circumstances of Mr. Gade's criminal and arrest record substantially relates to the circumstances of the practice of a real estates salesperson.

Also to be addressed are the issues of mitigation and rehabilitation relative to Mr. Gade's conviction and arrest record. First, only two and one half months after being sentenced to 30 months unsupervised probation, Mr. Gade again was arrested upon felony charges of serious controlled substances violations. Moreover, the criminal complaint contains allegations of Gade's admissions to other uncharged, extensive, continuing and serious criminal conduct, including illegal drug trafficking of marijuana and opium rock, and the purchase and sale of known stolen property for profit. Gade testified under oath that he never made these additional uncharged admissions, and also cited the fact that there is no documentation of these additional admissions, such as a signed or sworn statement by him. Gade also testified in mitigation of the Columbia County charges that his own home was searched as well as that of his friend, co-defendant Kenneth Goral, and no drugs were found in the search of Gade's home, and that further, when arrested in Goral's home, no drugs were found on Gade's immediate person. However, a reading of the entire criminal complaint belies this mitigation testimony of Gade. The criminal complaint alleges that drug paraphernalia consistent with drug dealing, including small zip-lock plastic baggies with apparent marijuana residue, a small hand held weighing scale and cellophane cigarette type wrappers consistent with packaging of opium, were all found in Gade's "fanny pack." Further, Goral is reported to have stated that Gade had just sold to him the opium rock found in Goral's desk drawer, that some of the marijuana found about Goral's room belonged to Gade, and Gade had just sold \$165.00 of marijuana to another individual present in the room at the time of the search and arrests. Of course, this proceeding is not the forum or occasion to try Gade's guilt or innocence on the felony charges in Columbia County, or to weigh the degree of his culpability. Those issues must be resolved in the Circuit Court for Columbia County.

However, the fact remains that these charges are still pending, and on the basis of those charged offenses alone, Mr. Gade's record demonstrates a distinct lack of rehabilitation. In fact, it appears from the face of the Columbia County criminal complaint, that the charges are significantly more serious than the first offense in Illinois. Until those latter charges are resolved, if they were to result in conviction, it is impossible to determine Mr. Gade's rehabilitation with respect to the latter charged offenses, as well.

Mr. Gade testified further by way of mitigation, that at the time of the first offense in Illinois and the latter charges in Columbia County, he was unemployed, and living at times at home with his parents or with friends. Gade testified he has since been employed, and since the Columbia County charges were filed he has obtained his GED and completed the real estate course and had taken and passed the real estate licensing examination. While this certainly can be viewed as efforts to turn his life around and rehabilitate himself, as of the time of hearing, only eleven months had passed since the latter charges were filed. Both Mr. Hansen in his testimony and Attorney Scanlan in argument, stated that this was insufficient time and demonstration of rehabilitation, and the undersigned agrees. Moreover, until the Columbia County felony charges are either dismissed or resolved, it is difficult to say when enough time will have passed, without

any further criminal convictions or charges, together with a record of responsible, trustworthy and productive conduct, to demonstrate sufficient rehabilitation to justify the grant of a license.

The testimony of Mr. Hansen and argument of Mr. Scanlan together with the evidence in this matter, satisfactorily establish the conclusion that Mr. Gade should not be licensed at this time, notwithstanding the testimony and arguments by Mr. Gade to the contrary. And, this should continue to be the case at least so long as the Columbia County felony charges remain pending. However, if those charges should be dismissed, in accordance with the testimony of Mr. Hansen, Steven Gade may so notify the Department with appropriate documentation, and request reconsideration of his application in view of that development. If, on the other hand, the felony charges result in conviction, the Department would be justified in requiring a substantial passage of time and demonstration of rehabilitation before granting Mr. Gade a license.

Dated at Madison, Wisconsin this 1st day of March, 1996.

A handwritten signature in cursive script, reading "Robert T. Ganch", is written over a horizontal line.

Robert T. Ganch

Administrative Law Judge

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

March 14, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)